

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HOUSE BILL 2191

AN ACT

AMENDING SECTIONS 12-826 AND 41-621, ARIZONA REVISED STATUTES; RELATING TO RISK MANAGEMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 12-826, Arizona Revised Statutes, is amended to
3 read:

4 12-826. Report of claims and judgments to legislature by
5 governor; payment

6 A. The governor shall report to the legislature at each session
7 judgments rendered against the state, and not theretofore reported.

8 B. The director of the department of administration shall draw his
9 warrant for payment of the judgment upon presentation to him of an
10 authenticated copy of the judgment together with the approval of the judgment
11 by the attorney general.

12 C. THE APPROVAL OF THE ATTORNEY GENERAL AND THE JOINT LEGISLATIVE
13 BUDGET COMMITTEE IS REQUIRED TO SETTLE AND PAY ANY CLAIM OVER THE AMOUNT OF
14 FIFTY THOUSAND DOLLARS OR ANY HIGHER LIMIT ESTABLISHED BY THE JOINT
15 LEGISLATIVE BUDGET COMMITTEE. IF IT IS IN THE BEST INTERESTS OF THIS STATE,
16 THE JOINT LEGISLATIVE BUDGET COMMITTEE MAY ESTABLISH HIGHER SETTLEMENT
17 LIMITS. THE ATTORNEY GENERAL AND THE JOINT LEGISLATIVE BUDGET COMMITTEE
18 SHALL APPROVE ANY SETTLEMENTS THAT INVOLVE THE STATE ACCEPTING LIABILITY FOR
19 A CLAIM FOR WHICH A MONETARY AMOUNT IS NOT PRESCRIBED, THE STATE ACCEPTING A
20 CHANGE IN ANY LEGISLATIVE FUNDING FORMULA THAT ALREADY EXISTS IN LAW OR THE
21 STATE ACCEPTING ANY SETTLEMENT BY WAY OF A CONSENT DECREE. THE SETTLEMENT OF
22 THESE CLAIMS SHALL BE SOLELY THE AUTHORITY OF THE ATTORNEY GENERAL AND THE
23 JOINT LEGISLATIVE BUDGET COMMITTEE.

24 D. THE ATTORNEY GENERAL SHALL NOTIFY THE JOINT LEGISLATIVE BUDGET
25 COMMITTEE AT LEAST MONTHLY OF ANY CLAIM AGAINST THIS STATE OR ANY OF ITS
26 AGENCIES AS A DEFENDANT IN ANY JUDICIAL ACTION IN WHICH OUTSIDE COUNSEL HAS
27 BEEN APPOINTED TO REPRESENT THIS STATE OR ITS AGENCIES.

28 ~~E.~~ E. The director of the department of administration shall not draw
29 the warrant until an appropriation ~~therefore~~ FOR THE WARRANT is made by the
30 legislature.

31 Sec. 2. Section 41-621, Arizona Revised Statutes, is amended to read:
32 41-621. Purchase of insurance; coverage; limitations;
33 exclusions; definitions

34 A. The department of administration shall obtain insurance against
35 loss, to the extent it is determined necessary and in the best interests of
36 the state as provided in subsection F of this section, on the following:

37 1. All state owned buildings, including those of the universities,
38 excluding buildings of community colleges, whether financed in whole or in
39 part by state monies, or buildings in which the state has an insurable
40 interest as determined by the department of administration.

41 2. Contents in any buildings owned, leased or rented, in whole or in
42 part, by or to the state, excluding buildings of community colleges, and
43 reported to the department of administration.

44 3. The state and its departments, agencies, boards and commissions and
45 all officers, agents and employees thereof and such others as may be

1 necessary to accomplish the functions or business of the state and its
2 departments, agencies, boards and commissions against liability for acts or
3 omissions of any nature while acting in authorized governmental or
4 proprietary capacities and in the course and scope of employment or
5 authorization except as prescribed by this chapter.

6 4. All personal property reported to the department of administration,
7 including vehicles and aircraft owned by the state and its departments,
8 agencies, boards and commissions and all ~~non-owned~~ NONOWNED personal property
9 which is under the clear responsibility of this state because of written
10 leases or other written agreements.

11 5. The state and its departments, agencies, boards and commissions
12 against casualty, use and occupancy and liability losses of every nature
13 except as prescribed by this chapter.

14 6. Workers' compensation and employers' liability insurance.

15 7. Design and construction of buildings, roads, environmental
16 remediations and other construction projects.

17 8. Other exposures to loss where insurance may be required to protect
18 this state and its departments, agencies, boards and commissions and all
19 officers, agents and employees acting in the course and scope of employment
20 or authorization except as prescribed by this chapter.

21 B. To the extent it is determined necessary and in the best interests
22 of the state, the department of administration shall obtain insurance or
23 provide for state self-insurance against property damage caused by clients
24 and liability coverage resulting from~~—~~ the direct or incidental care of
25 clients participating in programs of the state and its departments, agencies,
26 boards or commissions relating to custodial care. The insurable programs
27 shall include foster care, programs for the developmentally disabled, an
28 independent living program pursuant to section 8-521 and respite-sitter
29 service programs. The department shall obtain insurance or provide for state
30 self-insurance pursuant to this subsection to protect the clients
31 participating in these programs and individual providers of these program
32 services on behalf of the state and its departments, agencies, boards or
33 commissions. The insurance provided under this subsection does not include
34 medical or workers' compensation coverage for providers. The department may
35 include in its annual budget request pursuant to section 41-622, subsection D
36 a charge for the insurance or self-insurance provided in this subsection. To
37 assist in carrying out ~~the provisions of~~ this subsection, the department
38 shall establish a seven member advisory board in accordance with the
39 following provisions:

40 1. The board shall consist of three members appointed by the director
41 of the department of administration, at least one of whom shall be a foster
42 parent, two members appointed by the director of the department of economic
43 security, one member appointed by the director of the state department of
44 corrections~~—~~ and one member appointed by the administrative director of the
45 courts.

1 2. The board shall elect a chairman from among its members.

2 3. The board shall hold at least two meetings a year or shall meet at
3 the call of the chairman.

4 4. Board members shall serve for three year terms.

5 5. Board members are not eligible to receive compensation but are
6 eligible for reimbursement of expenses pursuant to title 38, chapter 4,
7 article 2.

8 6. The board shall provide advice to the department regarding coverage
9 and administration of ~~the provisions of~~ this subsection and shall assist the
10 department in coordinating its activities pursuant to this subsection with
11 state departments, agencies, boards and commissions.

12 C. The department of administration may obtain insurance against
13 loss, to the extent it is determined necessary and in the best interests of
14 the state as provided in subsection F of this section for the professional
15 liability of individual physicians and psychiatrists who provide services
16 under a contract with the state department of corrections. Coverage is
17 limited to acts and omissions committed inside a state department of
18 corrections facility while in the performance of the contract and to
19 individual physicians and psychiatrists who demonstrate to the satisfaction
20 of the state department of corrections that they cannot otherwise obtain
21 professional liability coverage for the services required by the contract.
22 The director of the department of administration may impose on the state
23 department of corrections a deductible of not more than ten thousand dollars
24 per loss that arises out of a professional liability claim pursuant to this
25 subsection. Deductible amounts established by the director shall be subject
26 to annual review by the joint legislative budget committee.

27 D. The department of administration may obtain property, liability,
28 disability or workers' compensation insurance, self-insure or develop risk
29 retention pools to provide for payment of property loss or casualty claims or
30 disability insurance claims against contractors of this state with the
31 approval of the joint legislative budget committee. With respect to
32 insurance, self-insurance or risk retention pools for contractors licensed
33 and contracted to do work for this state, the coverage afforded applies with
34 respect to the conduct of the business entity of that contractor. The pool
35 is available to all contractors regardless of the amount that the state
36 contracted work bears in relation to the amount of nonstate contracted work.
37 The contractor shall be terminated from the pool if the contractor ceases to
38 be a state contractor.

39 E. The department of administration may determine, in the best
40 interests of the state, that state self-insurance is necessary or desirable
41 and, if that decision is made, shall provide for state self-insurance for
42 losses arising out of state property, liability or workers' compensation
43 claims prescribed by subsection A of this section. If the department of
44 administration provides state self-insurance, such coverage shall be excess
45 over any other valid and collectible insurance. The director of the

1 department of administration may impose on state departments, agencies,
2 boards and commissions a deductible of not more than ten thousand dollars per
3 loss that arises out of a property, liability or workers' compensation loss
4 pursuant to this subsection. Deductible amounts established by the director
5 shall be subject to annual review by the joint legislative budget committee.

6 F. In carrying out ~~the provisions of~~ this chapter, the department of
7 administration shall establish and provide the state with some or all of the
8 necessary risk management services, or shall contract for risk management
9 services pursuant to chapter 23 of this title, as the director of the
10 department of administration deems necessary in the best interest of the
11 state, and ~~may~~, in addition to other specifications of such coverage as
12 deemed necessary, **MAY** determine self-insurance to be established. ~~The~~
13 ~~provisions of~~ Chapter 23 of this title shall not apply to the department of
14 administration's procurement of insurance to cover losses arising out of
15 state property or liability claims prescribed in subsections A and D of this
16 section or excess loss insurance for the state's workers' compensation
17 liability for individual or aggregate claims, or both, in such amounts and at
18 such primary retention levels as the department of administration deems in
19 the best interest of the state. In purchasing insurance to cover losses
20 arising out of state property or liability claims prescribed by subsection A
21 of this section, the department of administration is not subject to ~~the~~
22 ~~provisions of~~ title 20, chapter 2, article 5.

23 G. No successful bidder for risk management services pursuant to this
24 section shall be entitled to receive directly or indirectly any sales
25 commission, contingent commission, excess profit commission, ~~or~~ or other
26 commissions, or anything of value, as payment for the risk management
27 services except those amounts received directly from this state as payment
28 for the risk management services.

29 H. The department of administration shall pay for purchased risk
30 management services, premiums for insurance on state property and state
31 liability and workers' compensation pursuant to ~~the provisions of~~ this
32 chapter.

33 I. A state officer, agent or employee acting in good faith, without
34 wanton disregard of his statutory duties and under the authority of an
35 enactment that is subsequently declared to be unconstitutional, invalid or
36 inapplicable, is not personally liable for an injury or damage caused thereby
37 except to the extent that he would have been personally liable had the
38 enactment been constitutional, valid and applicable.

39 J. A state officer, agent or employee, except as otherwise provided by
40 statute, is not personally liable for an injury or damage resulting from his
41 act or omission in a public official capacity where the act or omission was
42 the result of the exercise of the discretion vested in him if the exercise of
43 the discretion was done in good faith without wanton disregard of his
44 statutory duties.

1 K. The state and its departments, agencies, boards and commissions are
2 immune from liability for losses arising out of a judgment for willful and
3 wanton conduct resulting in punitive or exemplary damages.

4 L. The following exclusions shall apply to subsections A, B and E of
5 this section:

6 1. Losses against this state and its departments, agencies, boards and
7 commissions that arise out of and are directly attributable to an act or
8 omission determined by a court to be a felony by a person who is provided
9 coverage pursuant to this article unless the state knew of the person's
10 propensity for that action, except those acts arising out of the operation or
11 use of a motor vehicle.

12 2. Losses arising out of contractual breaches.

13 M. If self-insurance coverage is determined to exist, the attorney
14 general, with funds provided by the department of administration, shall
15 provide for the defense, either through his office or by appointment of
16 outside legal counsel, of the state and its departments, agencies, boards and
17 commissions and all officers, agents and employees thereof and such others as
18 are insured by the department of administration for or on account of their
19 acts or omissions covered pursuant to this chapter. All state departments,
20 agencies, boards and commissions, all officers, agents and employees thereof
21 and such others as are insured by the department of administration shall
22 cooperate fully with the attorney general and department of administration in
23 the defense of claims arising pursuant to this chapter.

24 N. A claim for liability damages made pursuant to this chapter may be
25 settled and payment made up to the amount of twenty-five thousand dollars or
26 such higher limit as may be established by the joint legislative budget
27 committee with the approval of the director of the department of
28 administration. A claim over the amount of twenty-five thousand dollars up
29 to fifty thousand dollars or such higher limit as may be established by the
30 joint legislative budget committee may be settled and payment made with the
31 approval of the director of the department of administration and the attorney
32 general. ~~THE APPROVAL OF THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION,~~
33 ~~THE ATTORNEY GENERAL AND THE JOINT LEGISLATIVE BUDGET COMMITTEE IS REQUIRED~~
34 ~~TO SETTLE AND PAY~~ any claim over the amount of fifty thousand dollars or such
35 higher limit as may be established by the joint legislative budget committee
36 ~~may be settled and payment made with the approval of the director of the~~
37 ~~department of administration, the attorney general and the joint legislative~~
38 ~~budget committee.~~ If it is in the best interest of this state, the joint
39 legislative budget committee may establish higher settlement limits.
40 ~~PURSUANT TO THE AUTHORITY GRANTED, THE ATTORNEY GENERAL AND THE JOINT~~
41 ~~LEGISLATIVE BUDGET COMMITTEE SHALL APPROVE~~ any settlements, ~~INCLUDING ANY~~
42 ~~SETTLEMENT BY WAY OF A CONSENT DECREE,~~ involving amounts in excess of fifty
43 thousand dollars or such higher limit as may be established by the joint
44 legislative budget committee ~~shall be approved by the department of~~
45 ~~administration, the attorney general and the joint legislative budget~~

1 ~~committee pursuant to the authority granted.~~ The settlement of liability
2 claims shall be solely the authority of the department of administration, the
3 attorney general and the joint legislative budget committee. No state
4 department, agency, board or commission or any officer, agent or employee of
5 this state may voluntarily make any payment, assume any obligation, incur any
6 expense or maintain the individual right of consent for liability claims made
7 pursuant to this chapter except as provided by this section.

8 0. Neither the authority provided by this section to insure, nor the
9 exercise of such authority, shall:

10 1. Impose any liability on this state or the departments, agencies,
11 boards and commissions or any officers, agents and employees of this state
12 unless such liability otherwise exists.

13 2. Impair any defense this state or the departments, agencies, boards
14 and commissions or any officers, agents and employees of this state otherwise
15 may have.

16 P. The department of administration shall pay, on behalf of any state
17 officer, agent or employee, any damages, excluding punitive damages, for
18 which the officer, agent or employee becomes legally responsible if the acts
19 or omissions resulting in liability were within the officer's, agent's or
20 employee's course and scope of employment. The department of administration
21 may pay for all damages however designated which the officer, agent or
22 employee becomes legally responsible for if the acts or omissions resulting
23 in liability are determined by the director of the department of
24 administration to be within the person's course and scope of employment.

25 Q. The department of administration shall adopt such rules as are
26 deemed necessary to carry out, implement and limit the provisions of this
27 chapter.

28 R. For the purposes of determining whether a state officer, agent or
29 employee is entitled to coverage under this chapter, "within the course and
30 scope of employment or authorization" means:

31 1. The acts or omissions that the state officer, agent or employee is
32 employed or authorized to perform.

33 2. The acts or omissions of the state officer, agent or employee occur
34 substantially within the authorized time and space limit.

35 3. The acts or omissions are activated at least in part by a purpose
36 to serve this state or its departments, agencies, boards or commissions.

37 S. To the extent it is determined necessary and in the best interest
38 of this state, the department of administration may obtain design and
39 construction insurance or provide for self-insurance against property damage
40 caused by this state, its departments, agencies, boards and commissions and
41 all officers and employees of this state in connection with the construction
42 of public works projects. Workers' compensation liability insurance may be
43 purchased to cover both general contractors and subcontractors doing work on
44 a specific contracted work site. The department may include in its annual
45 budget request, pursuant to section 41-622, subsection D, the cost of the

1 insurance purchased or provided. In connection with the construction of
2 public works projects, the department of administration may also use an
3 owner-controlled or wrap-up insurance program if all of the following
4 conditions are met:

5 1. The total cost of the project is over fifty million dollars.

6 2. The program maintains completed operations coverage for a term
7 during which coverage is reasonably commercially available as determined by
8 the director of the department of insurance, but in no event for less than
9 three years.

10 3. Bid specifications clearly specify for all bidders the insurance
11 coverage provided under the program and the minimum safety requirements that
12 shall be met.

13 4. The program does not prohibit a contractor or subcontractor from
14 purchasing any additional insurance coverage that a contractor believes is
15 necessary for protection from any liability arising out of the contract. The
16 cost of the additional insurance shall not be passed through to this state on
17 a contract bid.

18 5. The program does not include surety insurance.

19 T. The state may purchase an owner-controlled or wrap-up policy that
20 has a deductible or self-insured retention as long as the deductible or
21 self-insured retention does not exceed one million dollars.

22 U. For the purposes of subsections S and T of this section:

23 1. "Owner-controlled or wrap-up insurance" means a series of insurance
24 policies issued to cover this state and all of the contractors,
25 subcontractors, architects and engineers on a specified contracted work site
26 for purposes of general liability, property damage and workers' compensation.

27 2. "Specific contracted work site" means construction being performed
28 at one site or a series of contiguous sites separated only by a street,
29 roadway, waterway or railroad right-of-way, or along a continuous system for
30 the provision of water and power.

31 V. Notwithstanding any other statute the department of administration
32 may:

33 1. Limit the liability of a person who contracts to provide goods,
34 software or other services to this state.

35 2. Allow the person to disclaim incidental or consequential damages.

36 3. Indemnify or hold harmless any party to the contract.